

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

**IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER WALTER L. GARTH,) No. 11 PB 2745
STAR No. 12765, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) (CR No. 1017317)**

FINDINGS AND DECISION

On May 10, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Walter L. Garth, Star No. 12765 (hereinafter sometimes referred to as "Respondent"), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 14: Making a false report, written or oral.

The Police Board caused a hearing on these charges against Police Officer Walter L. Garth to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on January 20, February 6, and March 6, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.
2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.
3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.
4. The Respondent's Motion to Dismiss is **denied**. While the Respondent originally advanced a number of arguments in his motion, all of these arguments were withdrawn, following discovery, except the argument that because the Respondent is presently on duty disability, he is neither an "officer" nor an "employee" within the meaning of §2-84-030 of the Municipal Code of Chicago. As such, the Respondent argues that the Police Board has no jurisdiction over the case brought against him. The Respondent, however, made clear that while he is presently on duty disability, he would not forego the right to return to active duty, should his medical condition improve, as he, in fact, has done in the past. Given that the Respondent retains the right to return to the police force, he remains an "officer" as that term has meaning under §2-84-030, and the Police Board has the authority to determine whether the conduct alleged in this case requires his discharge, thereby extinguishing his right to return to the force.

Chicago Police Department Special Order S08-01-04, Section II-P, underscores the Police

Board's jurisdiction, in that it provides that: "A sworn member of the Department is bound by the Rules, Regulations, directives and orders of the Chicago Police Department while on suspension, *leave of absence or disability pension*, except those rules, regulations, directives and orders which require the exercise of direct police action by a member or which by their very nature do not apply." (Emphasis added.) In other words, an officer's sworn oath continues (and his status as an "officer" continues) even while, like the Respondent here, the officer is on a leave of absence on account of a duty-related disability.

5. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

The Superintendent did not prove by a preponderance of the evidence that on or about May 1, 2008, at various intersections and locations in the City of Chicago, Officer Garth failed to pull over for Department personnel attempting to curb his motorcycle, and/or failed to signal when changing lanes, and/or failed to obey traffic control signals and drove into oncoming traffic causing other vehicles to swerve.

The Police Board finds that Garth, in fact, stopped his motorcycle when pulled over by Lieutenant Michael Berti, but that Berti did not exit his vehicle or otherwise seek to conduct a reasonable investigation at the scene. Rather, the Board finds, based on the credible testimony of Garth, that Berti cursed at Garth and then, after the motorcycle had stopped, repeatedly sought to make contact with Garth's motorcycle with his vehicle.

6. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral, in that:

Count I: The Superintendent did not prove by a preponderance of the evidence that on or about October 10, 2008, Officer Garth failed to cooperate with the investigation by providing false statements about alleged conversations he had with Sergeant Shaun Fleischhacker and/or Police Officer Sean Piazza and/or Sergeant James Haggard on May 1, 2008.

The Superintendent claims that Officer Garth lied when he told the Internal Affairs Division (IAD) that he reported to work at the 23rd District on May 1, 2008 around 6:30 a.m. but experienced stomach problems and asked Sergeant Shaun Fleischhacker for permission to go home in order to take his medication, and that Fleishhacker gave him this permission. The Board credits Garth's testimony that he spoke to Fleishhacker over the testimony of Fleishhacker that he did not recall seeing Garth that day. If, in fact, Fleishhacker did not excuse Garth from roll call, then surely Garth would have been disciplined, as he did not begin his shift until around 8:00 a.m., at least an hour after he was scheduled to start, and there is no evidence of such discipline. Moreover, Garth's medical history confirms his ongoing stomach problems related to his injuries on duty.

The Superintendent claims that Officer Garth lied when he told the IAD that he asked Officer Sean Piazza if there was any report of crimes occurring over the radio during the morning hours of May 1, 2008. Piazza testified that Garth, in fact, did ask him that morning if there were radio transmissions about a robbery or "anything happening out there." Piazza thus confirmed that Garth was telling the truth about this conversation.

The Superintendent also claims that Officer Garth lied when he said he spoke to Sergeant

James Haggard on May 1, 2008, about what had transpired with Lieutenant Berti, and Haggard told him (Garth) that nothing would be done about the incident, in terms of a CR or any discipline. The Board finds Garth's account of his conversation with Haggard, his supervisor, to be very credible. Haggard may well not have remembered the details of this conversation, as his memory of the day in question is limited, but, in any event, the Board finds that his testimony is not sufficiently credible to find Garth guilty of lying.

7. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral, in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that Officer Garth failed to cooperate with the investigation and violated General Order 93-03-02B, Section II-A-2 by not responding to a Department request, delivered to his residence on January 8, 2010 by certified mail, for his formal statement regarding an additional allegation of providing a false report.

It is undisputed that Officer Garth was interviewed concerning the incident at the heart of this complaint on October 10, 2008, and that he fully cooperated with the investigation during this interview. More than a year later, Sergeant Joseph Pionke of IAD wanted to conduct an additional interview. There is no dispute that Garth eventually sat for and cooperated with this second interview. The Superintendent, however, claims that Garth did not respond promptly to a request for this second interview, as he did not respond to a certified letter sent to his home requesting the second interview. The Superintendent did not offer into evidence a green, certified mail return receipt signed by Garth, indicating he had received the letter asking for a second

interview, but rather offered a U.S. Postal Service website document showing the letter was delivered. This document, however, does not show who received the letter or where it was delivered. Given that Garth's sat for two interviews and cooperated during those interviews, and the inadequacy of the Postal Service documentation, the Board finds the Superintendent did not satisfy his burden of proof in showing a willful failure to cooperate on the part of Garth.

8. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count I: The Superintendent did not prove by a preponderance of the evidence that on or about October 10, 2008, in the offices of the Internal Affairs Division, Officer Garth provided a false statement about an alleged conversation he had with Sergeant Shaun Fleischhacker on May 1, 2008, relative to receiving permission to go home for medication.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

9. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

Count II: The Superintendent did not prove by a preponderance of the evidence that on or about October 10, 2008, in the offices of the Internal Affairs Division, Officer Garth provided a false statement about an alleged conversation he had with Police Officer Sean Piazza on May 1, 2008, upon his (Garth's) arrival to the 023rd District station.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

10. The Respondent, Police Officer Walter L. Garth, Star No. 12765, charged herein, is **not guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,
in that:

Count III: The Superintendent did not prove by a preponderance of the evidence that on or about October 10, 2008, in the offices of the Internal Affairs Division, Officer Garth provided a false statement about an alleged conversation he had with Sergeant James Haggard on May 1, 2008, upon his (Garth's) arrival to the 023rd District station.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

BY REASON OF THE FINDINGS set forth herein, cause exists for restoring the Respondent, Police Officer Walter L. Garth, Star No. 12765, to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective May 17, 2011.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Thomas E. Johnson, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

IT IS HEREBY ORDERED that the Respondent, Police Officer Walter L. Garth, Star No. 12765, as a result of having been found **not guilty** of the charges in Police Board Case No. 11 PB 2745, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective May 17, 2011.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF APRIL, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

Police Board Case No. 11 PB 2745

Police Officer Walter L. Garth

Findings and Decision

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE